The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVID G. BLAHNIK, STEPHEN J. JACKSON,
STEVEN D. MONDAY, ALLEN B. PEACOCK and
CATHERINE A. ROLING

Appeal No. 2000-0402
Application 08/720,399

ON BRIEF

Before HAIRSTON, KRASS and BARRY, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

This is a decision on appeal from the final rejection of claims 1-29, all of the pending claims.

The invention is directed to a system and method for producing production control software for control modules on earthmoving machines.

Representative independent claim 1 is reproduced as follows:

1. A system for producing production control software for a plurality of electronic control modules, the electronic control modules being located on earthmoving machines for controlling machine operation, each machine having a subset of the electronic control modules, comprising:

a part file staging area for receiving and storing new production control software from a design engineering group;

a product engineering workstation coupled to the part filed staging area, the product engineering workstation operated by a product engineering user, the product engineering user being able to review, modify and approve the new production control software, the product engineering workstation being adapted to produce approved production control software;

a production staging area coupled to the product engineering workstation for receiving and storing approved production control software and for receiving an order for production of an earthmoving machine;

a production workstation coupled to the production staging area for receiving the order, determining the subset of electronic control modules located on the ordered earthmoving machine, and retrieving approved production control software corresponding to the subset of electronic control modules located on the ordered machine, the production workstation being coupled to the ordered machine and adapted to download the production control software from the production staging area to the subset of electronic control modules located on the ordered machine.

The examiner relies on the following references:

Beasley et al. (Beasley)	4,827,423	May 2, 1989
Oba et al. (Oba)	5,241,465	Aug. 31, 1993
Moore-McKee et al. (Moore-McKee)	5,648,898	July 15, 1997 (filed Dec. 19, 1994)

Claims 1-29 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Oba, Beasley and Moore-McKee.

Reference is made to the brief and answer for the respective positions of appellants and the examiner.

OPINION

It is the examiner's position that Oba discloses the claimed subject matter but for a release station coupled to the production staging area, the release workstation operated by a release user, the release user being able to determine an effective date of the approved control software, the release workstation being adapted to copy the approved control software from the pre-production repository to a production repository located at the production staging area on the effective date; a production workstation coupled to the production staging area for receiving the order for a production machine, determining the subset of electronic control modules located on the ordered production machine, and retrieving the production control software corresponding to the subset of electronic control modules located on the ordered production machine, the production workstation being coupled to the ordered production machine and adapted to download the production control software from the production staging area to the subset of electronic control modules located on the ordered production machine and a production staging area coupled to the product engineering workstation for receiving and storing approved production control software and for receiving an order for a production machine in a build schedule staging area.

The examiner then points to Beasley, identifying Figures 1- 3, column 1, line 39 through column 4, line 3 and column 4, line 53 through column 7, line 68, as teaching a release

workstation coupled to the production staging area, the release workstation operated by a release user, the release user being able to determine an effective date of the approved control software, the release workstation being adapted to copy the approved control software from the pre-production repository to a production repository located at the production staging area on the effective date; a production workstation coupled to the production staging area for receiving the order for a production machine, determining the subset of electronic control modules located on the ordered production machine, and retrieving the production control software corresponding to the subset of electronic control modules located on the ordered production machine, the production workstation being coupled to the ordered production machine and adapted to download the production control software from the production staging area to the subset of electronic control modules located on the ordered production machine and a production staging area coupled to the product engineering workstation for receiving and storing approved production control software and for receiving an order for a production machine in a build schedule staging area.

The examiner further identifies Moore-McKee as teaching a method of operating a computer to automatically produce control software for an information manager on earth moving machines.

Finally, the examiner concludes that it would have been obvious to modify the teachings of Oba with the teachings of Beasley and Moore-McKee because this modification would provide Oba's teaching with the enhanced capability of processing a product efficiently while

maintaining the average rate of variables within the parameters and thereby the process and operation of the machinery is monitored and controlled rapidly [answer-page 6].

While using an extraordinary amount of words to describe the alleged operation of the devices disclosed by the applied references, the examiner has clearly failed to establish any semblance of a prima facie case of obviousness with regard to the instant claimed subject matter and, as such, we will not sustain the rejection of claims 1-29 under 35 U.S.C. § 103.

In stating the rationale for the rejection of the claims, the examiner is clearly reciting language from a variety of the instant claims and attributing the characteristics described by this claim language to the various references, but the examiner only generally identifies large portions of the applied references without specifically pointing to any language within the disclosures of those references which teaches the various claimed elements. In applying the references to claims 1, 28 and 29, at pages 4-6 of the answer, the examiner does not even distinguish between the different claim language of the claims so it is unclear what portions of the references are being applied to what portions of the claims. In making a rejection under 35 U.S.C. § 103, the examiner should clearly identify particular elements in the references which correspond to specific claim elements, identify the differences, if any, and explain why the instant claim language, as a whole, would have been obvious in view of the applied references.

In the instant case, the examiner has applied Oba as teaching a part file staging area, a product engineering workstation coupled to the part file staging area, and a product engineering workstation operated by a user. Although the examiner points to column 1, line 10 to column 2, line 51, and Figure 1 of Oba for a teaching of the part file staging area, the examiner identifies

no particular language in the Oba disclosure which teaches such a part file staging area. Similarly, although column 9 to column 11 is identified as showing the claimed product engineering workstation, the examiner never identifies what, exactly, in Oba, is being relied on for correspondence to this claimed element.

Then, the examiner recites a long litany of elements and their functions as not being disclosed by Oba but being disclosed by Beasley. However, while the examiner identifies long sections of text within Beasley, e.g., column 1, line 39 to column 4, line 3, as disclosing the various recited claim elements, the examiner, again, fails to identify anything in particular, within the reference, that corresponds to the claimed elements.

While Moore-McKee is correctly identified as disclosing the operation of a computer to automatically produce control software in an earthmoving machine, there is no convincing rationale as to why or how any teachings of Oba and/or Beasley are to be combined with Moore-McKee. The rationale that this modification would provide Oba's teaching with the enhanced capability of processing a product efficiently while maintaining the average rate of variables within the parameters and thereby the process and operation of the machinery is monitored and controlled rapidly is meaningless as it recites general platitudes about efficiency and rapid control but is empty in the details department.

In our view, and particularly in view of no disclosure by Oba or Beasley as having any relevance to a system for producing production control software for a plurality of electronic control modules, let alone for use on earthmoving machines for controlling machine operation, the examiner has presented no cogent rationale as to how the elements disclosed by the applied

references correspond to the instant claimed elements in both structure and function and as to why the skilled artisan would have been led to combine these diverse references in any manner so as to result in the instant claimed subject matter.

While appellants argue that neither Oba nor Beasley is relevant to the instant claims, because Oba is directed to determining optimum scheduling in a computer-aided scheduling system with no corresponding description regarding utilizing the scheduling system to produce control software, and Beasley is directed to a hierarchical computer system for the actual control of manufacturing tobacco products, rather than to transmission among systems of production control software, the examiner's only response is that the combination of the references teaches the claims to the extent required [answer-page 9].

Clearly, the examiner has fallen far short of establishing a prima facie case of obviousness with regard to the instant claimed subject matter.

Accordingly, the examiner's decision rejecting claims 1-29 under 35 U.S.C. § 103 is reversed.

REVERSED

Kenneth W. Hairston	)
Administrative Patent Judge	)
	)
	)
	) BOARD OF PATENT
Errol A. Krass	)
Administrative Patent Judge	) APPEALS AND
	)
	) INTERFERENCES
	)
Lance Leonard Barry	)
Administrative Patent Judge	)

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